

FISCAL NOTE
Requested by Legislative Council
01/13/2015

Amendment to: HB 1335

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

None

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

None

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No change from current law

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

No change from current law

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No change from current law

Name: Al Jaeger

Agency: Secretary of State

Telephone: 701-328-2900

Date Prepared: 01/18/2015

FISCAL NOTE
Requested by Legislative Council
01/13/2015

Bill/Resolution No.: HB 1335

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No change from current law

Name: Al Jaeger

Agency: Secretary of State

Telephone: 701-328-2900

Date Prepared: 01/18/2015

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1335

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1335
1/26/2015
22517

- Subcommittee
 Conference Committee

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Explanation or reason for introduction of bill/resolution:

Deals with domestic & foreign cooperative, non-profit corporations, corporations & partnerships.

Minutes:

Attachments 1

Chairman Keiser: Opens the hearing on HB 1335.

Clara Jenkins on behalf of Al Jaeger, Secretary of State: (Attachment 1).

3:15~Questions below on section 1.

Chairman Keiser: Can it be electronic?

Jenkins: Yes it can.

Representative Hanson: Regarding item 6, on page 3, the Secretary of State office would like to see that the registration if it's reported. Under this language, that person would have to be notified to find out somehow that they have been registered at this agent for a business that they weren't aware of or go under the Secretary of State's web site page, find their name and find out what businesses are registered. Why would it be more efficient to have that reassurance upfront from the business agent themselves?

Jenkins: I can see going to getting the affirmation up from before we file the document. The problem with that is it's going to disallow electronic filing because that consent is coming from a different party than the filer in most cases. It's coming from two different directions and we would have to match those two documents together.

Representative Hanson: I'm confused, how does it being electronic or coming from two different sources, I guess I don't understand that.

Jenkins: When those articles of incorporation for a new business corporation, if they comes to us electronically and being files by the attorney for the company, that registered

agent consent is coming from somewhere else. They do not come in together, so we would end up pending the articles of incorporation. We may have the consent, we may not. So either way it will delay the process until those document can get matched up. This is an extra burden on the Secretary of State office and that problem was contemplated when the registered agent act was adopted and actually, contemplated nationwide when the uniform registered agent act was developed because it would impair electronic filing across commerce everywhere. So it was better to get rid of the consent of the registered agent and find different rules to solve those kinds of issues.

Representative Hanson: Did that come out of uniform law or uniform code? Are other states to your knowledge having this problem where it slows the process?

Jenkins: The uniform act removed the consent of the registered agent and best of my knowledge I'm not aware of any other state that has consent of agent any more.

Chairman Keiser: Is there any potential risk to this uninformed registered agent that creates a liability for them because they become the official registered agent and stops when they notify the Secretary of State. Say they became unknowingly the registered agent and may have some liability, is there any way to back it up to the time that notification was officially made to the Secretary of State that this was not only invalid one but exonerates them from responsibility?

Jenkins: I do believe that the courts probably would pick position that he was not a valid agent because there is an implication in statue that states that the person that's naming an agent, is supposed to seek the consent of that registered agent.

Jenkins: Continues reading her testimony on the next section.

14:40

Representative Kasper: On page 4, line 23, is this the precursor to requiring electronic filing or is that not the intent of this bill.

Jenkins: It is not the intent of the bill to require electronic filing. It is more permissive that they could submit any medium we are able to accept.

Representative Ruby: Section 9 of your testimony, the language reduces some of the fees to make it consistent but on the fiscal note is doesn't show any reduction of fees.

Jenkins: The reason there is no representation on the fiscal note is because we don't have a whole lot of cooperatives. That change is so minimal that it would not require a fiscal note.

Chairman Keiser: Page 12, line 14, what is the rationale for the trial being de novo.

Jenkins: I can't tell you what that term means.

Chairman Keiser: You start from scratch.

Jenkins: This language was copied from what is in the business corporation act and the limited partners and they are all treated in the same manner.

Tony Weiler~Executive Director of the State Bar Association of North Dakota: With the technical corrections and harmonizing certain portions, we support it and ask for a do pass.

Chairman Keiser: Anyone else here to testify in support of HB 1335, opposition, neutral? Closes the hearing. Committee, what are your wishes with the proposed amendment?

Representative Ruby: Moves to adopt the amendments 15.8171.01001.

Representative Hanson: Second.

Chairman Keiser: The amendment was adopted, what are the wishes of the committee?

Representative Lefor: Moves for a Do Pass as Amended.

Representative Laning: Second.

Roll call was taken for a Do Pass as Amended on HB 1335 with 12 yes, 0 no, 3 absent and Representative Hanson is the carrier.

January 26, 2015

BB
1-26-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1335

Page 1, line 17, replace "corperation" with "corporation"

Page 3, line 25, replace "10-15-52.3" with "10-15-53.2"

Page 3, line 26, replace "10-15-52.3" with "10-15-53.3"

Page 4, line 4, replace "10-15-52.3" with "10-15-53.2"

Page 11, line 3, replace "that" with "the"

Page 12, line 16, replace "that" with "the"

Renumber accordingly

Date: Jan 26, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1335

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.8171.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep Ruby Seconded By Rep Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Lefor		
Vice Chairman Sukut			Representative Louser		
Representative Beadle			Representative Ruby		
Representative Becker			Representative Amerman		
Representative Devlin			Representative Boschee		
Representative Frantsvog			Representative Hanson		
Representative Kasper			Representative M Nelson		
Representative Laning					

Total (Yes) _____ No _____

Absent _____

Floor Assignment R

If the vote is on an amendment, briefly indicate intent:
voice vote - passed

Date: Jan 26

Roll Call Vote: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1335

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep Lefor Seconded By Rep Laning

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	x		Representative Ruby	x	
Representative Becker	x		Representative Amerman	x	
Representative Devlin	Ab		Representative Boschee	x	
Representative Frantsvog	Ab		Representative Hanson	x	
Representative Kasper	x		Representative M Nelson	Ab	
Representative Laning	x				

Total (Yes) 12 No 0

Absent 3

Floor Assignment Rep Hanson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1335: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1335 was placed
on the Sixth order on the calendar.

Page 1, line 17, replace "corperation" with "corporation"

Page 3, line 25, replace "10-15-52.3" with "10-15-53.2"

Page 3, line 26, replace "10-15-52.3" with "10-15-53.3"

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Page 11, line 3, replace "that" with "the"

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Renumber accordingly

2015 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1335

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1335- Engrossed
2/18/2015
Job Number 24066

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Deals with domestic & foreign cooperatives, non-profit corporations, corporations and partnerships

Minutes:

Attachment

Chairman Klein: Called the committee back to order.

Clara Jenkins, On behalf of Al Jaeger, Secretary of State: Written Testimony Attached (1). (:28-7:20)

Senator Murphy: What would you say is the biggest deal here, two or three of the biggest deals?

Clara Jenkins: Said the two biggest deals; number one is the administrative process that would be applied when an organization names someone as a registered agent without seeking their approval and the second biggest deal is the court ordered reinstatement option that is being allowed for cooperatives.

Chairman Klein: Do we have a lot of folks out there using someone's name without permission?

Clara Jenkins: It is not a huge problem. I'd say it happens five or six times per year out of a total of about eighty five thousand that we notify for annual reports and that is when we become aware, when this person gets the annual report for that organization and wonders who are they and why is my name in there? (8:26-9:30)

Chairman Klein: The hope here is we would be scolding them more for doing it then?

Clara Jenkins: Pretty much I think it is going to be a serious deterrent for anybody to go down that road.

Tony Weiler, Executive Director of the State Bar Association of North Dakota: I represent almost 2,900 North Dakota lawyers. We support the legislation. What this does is simply harmonizes some of the language in other provisions in the Secretary of State

Senate Industry, Business and Labor Committee
Engrossed HB 1335
February 18, 2015
Page 2

Statutes and also works with the new uniform LLC act, which is going in front of the Senate Judiciary.

Chairman Klein: Closed the hearing.

Senator Poolman: Moved a do pass on Engrossed House Bill 1335.

Senator Sinner: Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Poolman will carry the bill.

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. Engrossed HB 1335**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Poolman Seconded By Senator Sinner

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Poolman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1335, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1335 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1335



SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 26, 2015

TO: Representative Kaiser and Members of the House Industry, Business and Labor Committee

FR: Clara Jenkins on behalf of Al Jaeger, Secretary of State

RE: HB 1335 – Relating to Business Entity Filings with the Secretary of State

House Bill 1335 was introduced at the request of the Secretary of State. While the bill has twenty-nine pages, the length is due to general administrative amendments being made in several different chapters pertaining, as applicable, to various business entities registered with the Secretary of State. Otherwise, a separate bill would be introduced for each chapter. However, by having it in this format, the changes that are common for each business entity are easily noted throughout in a single bill.

Section 1 of the bill amends Chapter 10-01.1, which is the Registered Agents Act. The changes in this section address the concerns raised on January 7, 2015, during the hearing on HB 1071. That is, when a business entity names a person as a registered agent without their prior consent.

Should that situation occur under the changes proposed in Section 1 and when the Secretary of State receives written notice of an improper appointment, the Secretary of State would be allowed to remove the improperly appointed person's name from the Secretary of State's records for that business entity.

The business entity would then be subject to penalty provisions for not maintaining a registered agent as required by state law. Those penalties include the organization being placed in a "Not in Good Standing" status. And, if an alternate registered agent was not filed within 60 days with the Secretary of State, the business entity would be subject to an involuntary dissolution or revocation.

These same provisions would apply to domestic and foreign cooperative associations (Section 7), domestic and foreign business corporation (Section 11), domestic and foreign nonprofit corporations (Section 15), domestic and foreign limited partnerships and limited liability limited partnership (Section 19), and domestic and foreign limited liability partnerships (Section 22). These same provisions are included in HB 1136, which is the Uniform Limited Liability Company Act. That bill received an 11 to 0 Do Pass recommendation and it has been placed on the 11th Order in the House.

An involuntary dissolution or revocation is the ultimate penalty to an organization and would be a serious matter for a business entity. By state law, they would cease to exist or their authority as a foreign entity would cease to exist. If that happens, they could not legally conduct business in the state under that business structure. Therefore, placing these provisions in state law would be a significant deterrent to any future appointment being made of a person as a registered agent without their consent.

Another change made throughout the bill is related to an address change made with a business entity's principal executive office. On occasion, an organization changes the address of their principal executive office and when that happens, it is important to have the new address noted in the public records of the Secretary of State. This is especially pertinent when that information is posted on the Secretary of State's website. Under current state law, a business entity is charged \$10 to \$20 to file such an address change with the Secretary of State. Therefore, this bill proposes to eliminate the fee (Sections 10, 13, 16, 17, 20, and 21) and allow these address changes to be made without a charge by the business entity filing a statement with the Secretary of State. Or, they can make the address change when submitting the entity's annual report.

Sections 5 through 8 create new sections in chapter 10-15, the Cooperative Association Act. While these are new sections (except as will be noted), they organize existing law in that chapter into a more easily read format than the way it now exists in the cooperative related sections being repealed in Section 24 of this bill. The only new law in Section 5 and 7 pertains to the registered agent provisions described for Section 1.

The other new proposed law for this chapter is in Section 8. It allows a court-ordered reinstatement provision that does not currently exist in cooperative association laws. For many years, such a provision has existed in state law for all of the other business entities registered with the Secretary of State and over the years, it has proven to be a very beneficial option for the reinstatement of business entity's under the supervision of the court. This bill extends the same court-ordered reinstatement option to cooperative associations.

Section 9 creates the identical fee structure for a cooperative association that exists now for all of the other business entities. As such, it actually reduces some of the fees to make them consistent with the other business entities.

Section 11 creates a new section to 10-19.1, the North Dakota Business Corporation Act. It provides for a more easily read format than the related provisions being repealed in Section 24. The only new provisions are related to registered agents as referenced for Section 1.

Section 15 creates a new section to 10-33, the North Dakota Nonprofit Corporation Act. It provides for a more easily read format than the related provisions being repealed in Section 24. The only new provisions are related to registered agents as referenced for Section 1.

Section 18 clarifies a provision when a limited partnership amends its certificate following disassociation of a general partner and is unable to gain the signature from the disassociating partner.

Section 19 creates a new section to 45-10.2, the North Dakota Uniform Limited Partnership Act. It provides for a more easily read format than the related provisions being repealed in Section 24. The only new provisions are related to registered agents as referenced for Section 1.

Section 23 corrects the fee of a foreign limited liability limited partnership to make it identical to the same fee paid by a domestic limited liability limited partnership. This fee was overlooked in the past legislative session.

Sections 2, 3, 4, 12, and 14, correct cross references from the sections that were repealed in section 24, which are now included in the new sections that were created by Sections 11, 15, and 18.

Finally, in proofreading the bill after its introduction, the Secretary of State is offering an amendment to correct several items.

Then, after amended, the Secretary of State is requesting the committee's favorable consideration and a Do Pass recommendation.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1335

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#1

ALVIN A. JAEGER
SECRETARY OF STATE



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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

February 18, 2015

TO: Senator Klein, Chairman, and Members of the Senate Industry, Business, and Labor Committee

FR: Clara Jenkins on behalf of Al Jaeger, Secretary of State

RE: HB 1335 – Relating to Business Entity Filings with the Secretary of State

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Another change made throughout the bill is related to an address change made with a business entity's principal executive office. On occasion, an organization changes the address of their principal executive office and when that happens, it is important to have the new address noted in the public records of the Secretary of State. This is especially pertinent when that information is posted on the Secretary of State's website. Under current state law, a business entity is charged \$10 to \$20 to file such an address change with the Secretary of State. Therefore, this bill proposes to eliminate the fee (Sections 10, 13, 16, 17, 20, and 21) and allow these address changes to be made without a charge by the business entity filing a statement with the Secretary of State. Or, they can make the address change when submitting the entity's annual report.

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Section 18 clarifies a provision when a limited partnership amends its certificate following disassociation of a general partner and is unable to gain the signature from the disassociating partner.

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